

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-45 and should be submitted on or before August 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50125; File No. SR-Phlx-2004-44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Linkage Fee Pilot Program

July 30, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 9, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 27, 2004, Phlx filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to adopt new charges applicable to Principal ("P") Orders sent via the Intermarket Options Linkage ("Linkage") under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan").⁴

The Exchange intends to implement this fee on a pilot basis, ending July 31, 2005, for transactions settling on or after the first day following the Commission's approval of the proposal.⁵

The proposed fee schedule is available at the principal office of the Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

in Item III below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise revenue for the Exchange by charging Exchange members for transactions involving inbound P Orders sent by such members via the Linkage pursuant to the Plan.⁶

Currently, the Exchange's schedule of dues, fees and charges includes the following charges applicable to Linkage P Orders on a pilot basis ("pilot"),⁷ scheduled to expire on July 31, 2004:

Up to 2,000 contracts—\$.35 per contract.

Between 2,001 and 3,000 contracts—\$.25 per contract (for all contracts).

Residual above 3,000 contracts—\$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged \$.25 per contract).

The Exchange has represented that its fees applicable to Linkage P Orders are consistent with other fees charged by the Exchange for non-Linkage Orders for the proprietary account(s) of off-floor

⁶ Under section 2(16) of the Plan and Exchange Rule 1083(k), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal ("P") Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

The Exchange will not assess any charges for P/A Orders and Satisfaction Orders.

⁷ The Commission originally approved the pilot on May 30, 2003. See Securities Exchange Act Release No. 47953, 68 FR 34027 (June 6, 2003) (SR-Phlx-2003-16). This pilot expired on January 31, 2004. On January 30, 2004, the Commission approved the Exchange's proposal to extend the pilot through July 31, 2004. See Securities Exchange Act Release No. 49163, 69 FR 5885 (February 6, 2004) (SR-Phlx-2003-89).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Richard S. Rudolph, Counsel, Phlx, to Jennifer Colihan, Special Counsel, Commission, dated July 27, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to make technical corrections to the Summary of Equity Option Charges of the Exchange's schedule of dues, fees, and charges, originally submitted as Exhibit 2 to the proposed rule change.

⁴ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as participant in the Plan); and 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (amendment conforming the Plan to the requirements of the Act Rule 11Ac1-7).

⁵ For example, if the Commission approves the proposal on July 31, 2004, the Exchange intends to implement this fee for transactions settling on or after August 1, 2004.

⁹ 17 CFR 200.30-3(a)(12).

broker-dealers⁸ delivered to the Exchange.⁹

However, since the implementation of the pilot, the Exchange has amended its fees applicable to non-Linkage off-floor broker-dealer orders sent to the Exchange via AUTOM, the Exchange's electronic order delivery, routing, execution and reporting system.¹⁰ Specifically, AUTOM-delivered non-Linkage off-floor broker-dealer orders are now charged \$.45 per contract for all contracts executed.¹¹ The proposed amendment to the Exchange's fee schedule would impose the same \$.45 per contract charge on Linkage participants who send P Orders to the Exchange on a pilot basis through July 31, 2005.¹² The Exchange will not charge fees for other types of Linkage Orders.¹³

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act¹⁴ in general, and furthers the objectives of section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members who avail themselves of the Linkage, consistent with other fees charged by the Exchange for non-Linkage Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

⁸ The term "off-floor broker-dealer" is defined as a broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer, including a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker. See Exchange Rule 1080(b)(i)(C).

⁹ See *supra* note 6.

¹⁰ See Securities Exchange Act Release No. 49751 (May 21, 2004), 69 FR 30735 (May 28, 2004) (SR-Phlx-2004-25).

¹¹ Previously, these orders were charged under the \$.35/\$.25/\$.20 schedule listed above.

¹² The Exchange represents that Linkage Orders are delivered to the Exchange via AUTOM. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Jennifer Colihan, Special Counsel, and Molly M. Kim, Attorney, Division of Market Regulation, Commission, on July 22, 2004.

¹³ See *supra* note 5.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2004-44 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-44 and should be submitted on or before August 26, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,¹⁶ and, in particular, with the requirements of section 6(b) of the Act¹⁷ and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(4) of the Act,¹⁸ which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that approving the amended Linkage fee pilot to adopt new charges applicable to P Orders until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,¹⁹ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's pilot program for Linkage fees without interruption as Phlx and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act²⁰ that the proposed rule change, as amended, (SR-Phlx-2004-44) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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¹⁶ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ *Id.*

²¹ 17 CFR 200.30-3(a)(12).